

MINUTES
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE
FOURTH MEETING: FEBRUARY 26 - 28, 1993
HONOLULU, OAHU, HAWAII

The fourth meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Chairperson Tessie Naranjo at 8:45 a.m., Friday, February 26, 1993, at the Atherton Halau, Bernice Pauahi Bishop Museum, Honolulu, Oahu, Hawaii. Saturday and Sunday, February 27 and 28, 1993, the Review Committee met at the Turtle Bay Hilton Hotel, Oahu, Hawaii. The following Review Committee members, staff, and others were in attendance:

Members of the Review Committee:

Ms. Tessie Naranjo, Chair
Ms. Rachel Craig
Dr. Jonathan Haas
Mr. Dan Monroe
Dr. Martin E. Sullivan
Mr. William Tallbull
Dr. Phillip L. Walker

National Park Service staff present:

Dr. Francis P. McManamon, Departmental Consulting Archeologist, Washington, D.C.
Dr. C. Timothy McKeown, NAGPRA Program Leader, Washington, D.C.
Mr. Hugh (Sam) Ball, Archeologist, Washington, D.C.
Ms. Mella Lane-Hamasaki, Pacific Area Office
Mr. Earl (Buddy) Neller, Kalaupapa National Historic Site
Dr. Patricia Parker, Coordinator for Tribal Preservation Programs, Washington, D.C.
Dr. Gary Somers, Pacific Area Office

The following were in attendance during some or all of the proceedings:

Ms. Melinida Allen, Bishop Museum
Ms. Kalaniana'ole 'Apuakehau, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Ms. Lisa Armstrong, Research Assistant, Bishop Museum
Mr. Edward Halealoha Ayau, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei and Historic
Preservation Division
Mr. Manu Boyd, Cultural Specialist, Office of Hawaiian Affairs
Ms. Esther Iwalani Campbell, Ha Kekili
Ms. Hinano K. Campton, Daughters of the First People and Central Coast Indigenous Council
of California
Dr. Sara Collins, Consulting Physical Anthropologist, Bishop Museum
Mr. David Cox, Board Member
Ms. Michelle Douglas, Graduate Student
Dr. Donald Duckworth, Bishop Museum
Ms. Deborah Dunn, Student

Ms. Kauwamakani Ellis, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei
Ms. Linda Fabri, University of California, Berkeley
Ms. Stephanie Lei Fitzpatrick, Mission House Museum
Ms. Ulunui Kanakaole Gormon, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei
Ms. Annie Griffin, State Historic Preservation Office
Dr. Bion Griffin, University of Hawaii
Mr. Kaiana Haili, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei
Ms. Toni Han, Cultural Resource Specialist, Anthropology, Bishop Museum
Ms. Dana Kananiokilohana Higa, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei
Ms. Susan Hirano, University of California, Berkeley
Ms. Lindas Hoe, Bishop Museum Conservation
Ms. Rebecca J. Hommon, US Navy
Dr. Robert J. Hommon, US Navy
Ms. Elaine Jourdane, Collections Manager, Bishop Museum
Ms. Rhonda Kaivai, Historical Researcher
Mr. Edward Kanahale, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei
Ms. Keala Kekina, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei
Mr. Glen Kila, Koa Mana
Ms. Nancy King, Bishop Museum
Ms. Lynn Lee, Office of Hawaiian Affairs
Mr. Puna Lerma, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei
Mr. Ahi Logan Kekuamanoha, a Senior Member of the Pilikana O Na Koolauloa
Mr. Bulla Logan, Pilikana O Na Koolauloa
Ms. Leimomi Mookini Lum (Alexis Carva), Mookini Foundation
Ms. Kealakekine Maikai
Mr. Alohaaina Makaanani, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei and Ka Lahui Hawai‘i ʻāna
Protect Kahoolawe Ohana
Ms. Malia Makaanani, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei
Ms. Adrienne Makaanani, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei
Ms. Joan A. Marks, US Representative
Ms. Holly McEldowney, State Preservation Division
Mr. Rudy Leikaimana Mitchell, Waimea Falls Park
Ms. Gail M. Murakami, Bishop Museum
Mr. Nathan Napoka, Branch Chief for Culture and History, State Historic Preservation Office
Ms. Janet Ness, Bishop Museum
Ms. Leianuenue Niheu, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei
Ms. Ipo Nihipali, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei
Mr. Kūnani Nihipali, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei
Ms. Nohealani Nihipali, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei
Ms. Kathleen Oshiro, State Historic Preservation Officer
Ms. Lei Parker, private citizen
Ms. Pikake Pelikai, Office of Hawaiian Affairs
Ms. Wendy Reeve, Bishop Museum
Dr. Roger Rose, Bishop Museum
Ms. Laura C. Schuster, Kaloko Honokohau N.H.P.
Mr. Alike Silva, Koa Mana

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Mr. H. Kaulana T. Smith, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei
Mr. Mike Smith, Assistant Chancellor at University of California, Berkeley
Ms. Melelani Spenceer, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei
Ms. Angela Steiner-Horton, Bishop Museum
Ms. Ululani Suiso, Mookini Ulkuni Foundation
Mr. Keith B. Sunderlin, Private Citizen
Dr. Elizabeth Tatar, Bishop Museum
Ms. Kealohikina Tsukayama, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei
Ms. Debra Ward, Office of Hawaiian Affairs
Mr. George Wheels, US Marine Corps
Dr. Tim White, Professor of Anthropology, University of California, Berkeley
Mr. Alan Ziegler, Independent Zoological Consultant

Chairperson Tessie Naranjo thanked the Hawaiian people for inviting the Committee to meet in such a lovely place and called on Mr. Manu Boyd of the Office of Hawaiian Affairs to give an invocation. Mr. Boyd sang two *mele*, or welcoming chants, after which members of the Office of Hawaiian Affairs presented the Committee members with *leis* while more *mele* were sung. Chairperson Naranjo then asked Committee members and other officials at the table to introduce themselves.

Dr. McManamon thanked the Bishop Museum, the Office of Hawaiian Affairs, Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei, the P.A. Hearst Museum of Anthropology, and the Pacific Area Office of the National Park Service for their help in organizing and publicizing the meeting. Dr. McManamon noted that the meeting had been advertised in the *Federal Register* as well as in *Ka Wai Ola O OHA*, the monthly newspaper of the Office of Hawaiian Affairs, and was open to the public. He requested that all people who wished to make statements to the Committee sign up in advance.

Review of the Agenda

Chairperson Naranjo reviewed the meeting agenda. Three items dominated the agenda: 1) the formal hearing of the dispute between the P.A. Hearst Museum at the University of California, Berkeley and Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei; 2) an open discussion by members of the public concerning implementation of NAGPRA in Hawaii; and 3) review of a draft of the Committee’s Report to Congress. In addition, the Bishop Museum had requested time to make a formal presentation to the Committee regarding their efforts to inventory Hawaiian human remains from various archeological excavations in the vicinity of Mokapu, Oahu.

Dispute Hearing

Dr. McManamon reviewed the history of the Committee and its role in the dispute resolution process. Chairperson Naranjo outlined the Committee’s procedures for dealing with disputes. "Most importantly," she stressed, "we want for all of us to talk to each other." For this reason, representatives of the two organizations were asked to sit at the table with the Committee. The P.A. Hearst Museum was represented by Dr. Timothy White and Mr. Mike Smith. Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei was

represented by Mr. Kūnani Nihipali, Mr. Edward Ayau, Mr. Edward Kanahele, and Ms. Ulunui Kanakaole Gormon.

The two groups were allowed to make brief opening statements after which the Committee members asked questions. Dr. Sullivan stated he understood that neither party was opposed to repatriation in general, nor was there a question of the appropriateness of the organization requesting repatriation. Thus, he said, the dispute appeared to revolve around the determination of cultural affiliation. He asked each party to explain its plans for custody of the remains. Dr. White responded for the Hearst Museum explaining that the osteological collections at the museum are used for continuing education and research. The museum's collection is an important resource for researchers from around the world because it contains such a diverse and large number of skeletal remains from modern humans. Mr. Edward Kanahele responded that Hui Mālama I Nā Kūpuna 'O Hawai'i Nei intended to rebury the remains in order to return the bones to the earth and to right spiritual and moral wrongs. According to Mr. Kanahele, reburial strengthens the connection between present day people and the ancestors by allowing the spiritual power, the *mana*, of the ancestral bones to flow back to the earth.

Mr. Monroe questioned the Hearst representatives regarding their specific interest in the particular remains in question. Mr. Smith responded that the Hearst was concerned about certain ambiguities in the law and did not want to violate the museum's mission by deaccessioning materials held in the public trust. The museum felt that these particular skeletal remains were unidentifiable ethnically and, consequently, did not believe they should be repatriated to a Native Hawaiian organization. Dr. White stated that the remains were important as a part of the University's osteological collection. It was not so much that these specific remains could answer a particular research question, he continued, but rather that the collection is important as a whole. He emphasized the need to keep the collection because research tools are constantly improving and thus important questions might be answered at a later date. He added that absolutely no research had been performed on Native Hawaiian skeletal remains. All human remains in the museum's possession that had been identified as being culturally affiliated to Native Hawaiians had previously been repatriated. Mr. Ayau responded that Hui Mālama I Nā Kūpuna 'O Hawai'i Nei viewed their ancestors' remains not as osteological resources or archeological material but as people. He went on to question the right of a museum to collect someone's remains without the consent of their descendants.

Dr. Haas asked if there might be any spiritual consequences if non-Hawaiian remains were buried with Hawaiian ceremonies in a Hawaiian burial place. Mr. Kanahele explained the Hawaiian belief that the spiritual strength, or *mana*, in one's bones can be taken away by evil or negative thoughts. Thus, bones need to be protected so that the *mana* can flow back into the Earth. The Earth will then reciprocate and help the living people. "We see this spiritual force as something that benefits everyone." Mr. Ayau added, "even if these remains are not of our people, we would be paying them that equal respect."

Dr. McManamon clarified that there was nothing in the statute that prohibited scientific research involving Native American human remains except as an excuse to delay or refuse repatriation. He also explained that one of the important aspects of NAGPRA concerned the right of modern Indian tribes and Native Hawaiians to determine the future treatment of culturally affiliated remains.

Mr. Tallbull recounted his experience reburying the remains of a man who had lived 1500 years ago. He emphasized the communication he felt with the man's spirit and the connection "to the spirit of the Earth,

to the spirit of plant life, and the spirit of animal life." He explained that the laws we have in this country do not always mention the spiritual connection.

Mr. Monroe thanked both sides for acting with diligence and integrity in supporting their firm convictions. He asked each party if they saw any way of resolving the conflict between their respective duties -- the museum's to preserve the integrity of the collection and insure repatriation to the correct group and the Hui Mālama I Nā Kūpuna 'O Hawai'i Nei's to rebury the bones of their ancestors. Mr. Ayau responded that NAGPRA "fails to recognize the legitimacy of spirituality." He related the feelings he and his wife received from the bones in question during a visit to the Hearst Museum. He stated that because the statute does not address spirituality directly, a conflict arises between science, with measurement standards, and spirituality, which must be felt.

Dr. Walker asked why the museum had been unable to reach a conclusion regarding the ethnicity of the skeletons in question. Dr. White related the history of the research which had been conducted by the museum. The records for the first set of remains stated they had come from the beach at Waimanalo, Oahu, in the 1800s. Dr. White agreed that there had been, and still are, Native Hawaiian burial grounds on Waimanalo but added that there are also non-Hawaiian cemeteries in the area. He added that the museum records were not specific as to where on Waimanalo Beach the remains had been found, or even if the remains had been buried. Without that contextual evidence he contended that the remains could have come from shipwreck victims, drowning victims, or forensic cases. He explained that the bones showed weathering, indicating exposure to the sun, and were thus probably not from a burial.

Dr. White continued that records for the second set of remains indicated only that they had come from the Hawaiian Islands. The curator who originally determined that the remains were Polynesian had no experience in skeletal biology and, according to Dr. White, was thus not a reliable source. The biological characteristics of both sets of remains were not sufficient "to provide definitive evidence of cultural affiliation."

Mr. Ayau expressed his belief that the Native Hawaiian organizations had provided evidence, including archeological and osteological reports, that proved it "is more probable than not that these are our ancestors." He added that the museums' records for the second set of remains contained a determination that they were "Polynesian." He felt the museum was attempting to hold the Committee to a higher, scientific standard of proof which is not necessary under NAGPRA. "The feelings that we had [in the presence of the bones at the museum] . . . that these are our people [and] that, to us, is the overriding evidence that they need to come home." Mr. Ayau concluded that repatriation would be a win-win situation because the museum would be following the provisions of the statute, and in doing so, protect the integrity of its collection, while the spiritual needs of the Native Hawaiians would be met.

Dr. Haas asked if the remains had been examined by Dr. Patrick Kirch, a Hawaiian archeological expert at the University of California at Berkeley. Dr. White responded that Dr. Kirch had examined the remains, but that he had not been requested to give the odds of finding remains that were anything other than Native Hawaiian on Waimanalo Beach in the early 1880s.

Mr. Monroe asked if Hui Mālama I Nā Kūpuna 'O Hawai'i Nei would permit destructive testing in order to determine the cultural affiliation of the remains. They replied no.

Mr. Ayau and Mr. Smith summarized the points of Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei and the P.A. Hearst Museum at University of California at Berkeley, respectively.

Public Comment on the Dispute

The Committee then heard comments from the public concerning the dispute. Mr. Alan Ziegler, an independent zoological consultant, spoke about the difficulties discerning cultural relationships between human remains and contemporary people on Hawaii because of the mixture of different cultures, ancient and modern. He suggested the regulations currently being developed should provide a definite method of determining the cultural affiliation of human remains, including the possible use of destructive analysis. Mr. Ziegler approved of the purpose of the Review Committee to meet and talk out conflicts. He also pointed out that the regulations do not cover disposition of remains and suggested records be kept of exactly what happens to human remains after they are repatriated because if the remains are reburied secretly they may be disturbed in later years and know one will know what they are or how they got there. Mr. Ziegler also spoke against Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei’s policy of secret reburial of all remains found in Hawaii. He felt this policy "suppresses information" that would be of value to Native Hawaiians. He did not want the evidence of Hawaiian cultural history destroyed for people of the future.

Ms. Lynn Lee of the Office of Hawaiian Affairs spoke on behalf of Richard Paglinawan, Administrator of the Office of Hawaiian Affairs, and Ms. Lydia Namahana Maioho, Chairman of Hawaiian Historic Preservation Council, in support of Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei’s request for the return of human remains from the Hearst Museum. She identified a central question around which the current dispute revolved: whether the remains were Hawaiian. In her opinion, a preponderance of the evidence -- the remains were found in a place of traditional Hawaiian burials and buried in a traditional Hawaiian manner -- supported the identification as Native Hawaiian. The museum, on the other hand, had not presented any facts to indicate that the bones were not Hawaiian. She believed the museum was "holding the remains hostage" while arguing over "the letter of the law."

Ms. Lei Parker spoke in Hawaiian and Mr. Boyd translated. Ms. Parker stated that the bones of the ancestors are precious to Hawaiians. They must be returned to the earth after death so that the *mana* will be "increased and inspired." The fact that the representatives of Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei had felt the present of their ancestors in the human remains held at Berkeley obligated them to manage those remains. The museum would "spiritually enslave" the Hawaiian people if they continued to keep the bones.

Review Committee Discussion of the Dispute

After the public comment period the Review Committee discussed the dispute among themselves. Mr. Monroe stated everyone understood that no one can own human remains, "they can at best be in someone’s stewardship." He concluded that the question before the Committee was "which is the most appropriate party to maintain such stewardship for the remains in question." It was clear to him that both physical anthropological evidence and "evidence of spirituality" must be considered. He indicated that the Hearst Museum had asked the Committee to determine what constitutes a "preponderance of the evidence." Mr. Monroe responded by reiterating the points which had been made during the presentations: (1) the beach where the remains were found at Waimanalo was traditionally a Hawaiian burial ground; (2) the remains were found in 1887 and at that time the majority of dead buried at the beach would have

been Native Hawaiians; and (3) no determination of cultural affiliation could be reached based on physical anthropological evidence. He concluded that in his opinion the preponderance of the evidence pointed to the conclusion that the Waimanalo remains are Native Hawaiian and he proposed a recommendation that the Hearst Museum return the remains to Hui Mālama I Nā Kūpuna 'O Hawai'i Nei.

Dr. Haas spoke concerning the second set of remains. He personally was not swayed one way or the other regarding the cultural affiliation of these human remains. However, he believed that the general consensus among the Committee was that these remains were Hawaiian and that Hawaiian remains should come back to Hawaii. Dr. Haas suggested that the Hearst Museum transfer the second set of remains to the Bishop Museum in Hawaii. Thus, these human remains, which everyone agreed were originally from Hawaii, would come back home. This solution would allow other ethnic groups living in Hawaii, such as members of the Chinese and Japanese communities, to have a voice in the decision about the disposition of these human remains. Dr. Sullivan agreed, although he indicated he would also support a recommendation to return the remains to Hui Mālama I Nā Kūpuna 'O Hawai'i Nei for reburial.

Mr. Tallbull stated that he would need to "go to the spirits ... for guidance on what he should do" before making his decision. "That's the only place I can turn to satisfy the spirits of this island," he said. Until that time, he reserved judgement.

Dr. Walker described the Committee's difficulty in putting aside their personal feelings in order to try to follow the intent of the statute. The Committee was working together "like a family" to work within both the letter and the spirit of the law. He agreed with Dr. Sullivan's previous statement that the preponderance of the evidence supported the contention that the Waimanalo remains are culturally affiliated with Native Hawaiians and, thus, should be repatriated. He also agreed with Dr. Haas's solution with regard to the second set of remains in that it encouraged the sort of communication between the scientific community and Native peoples intended by NAGPRA.

Chairperson Naranjo explained that her comments were rooted in the Pueblo philosophy of balance. She felt that both sets of human remains should be repatriated. She questioned why the museum would wish to keep fragments of human bone that it had agreed were of no scientific interest. She felt the second set of remains should be repatriated to remove the imbalance created when "any [human] remain has not been returned to their homeland." According to Ms. Naranjo, the return of these bone fragments would "give balance to the Hawaiian cosmology."

Mr. Monroe reminded the museum community as a whole that the consultation and repatriation process is an opportunity for them to "provide leadership in our nation for increasing our appreciation of cultural diversity, our appreciation of the richness of the human spirit and its manifestations." In the spirit of the law, he asked the Hearst Museum to give a little, and recognize that there is "a genuine and a deep-felt spiritual concern, for the return of those particular remains."

Ms. Craig began her recommendation by thanking the people of Hawaii for their hospitality. She then advised the representatives of the Hearst museum to look more closely at what they are doing and "work closely with the Native people and learn more ... of what's really important." She was particularly concerned with the effect continued curation of these remains might have on the "progress that a person makes in the spirit world." She explained that "there is really no rest for that spirit whose bones are not

interred in the ground." She agreed that both sets of human remains should come back to Hawaii, although she left it to the Hearst Museum to decide whether the second set of remains should be transferred to the Bishop Museum or repatriated to the Hawaiian people.

Ms. Lei Parker spoke again from the audience. She apologized for her earlier comments which might have been taken by the Committee as insults. She asked the Committee to remember compassion even as they deal with people who lack compassion.

Discussion of Draft Findings

The Committee agreed to issue separate findings for each of the two sets of human remains under dispute. Mr. Monroe recommended that the findings clearly state the types of evidence which the Committee considered important for the determination of cultural affiliation: physical anthropological information and contextual information. Since the physical anthropological information was inconclusive with regard to the two sets of remains in question, the findings should clearly explain the contextual information upon which the Committee based its decisions.

Dr. Haas pointed out that the statute explicitly recognized a wide variety of types of evidence that could be considered in determining the cultural affiliation of human remains and cultural items, including "other expert opinion." He recommended the spiritual evidence that had been presented by Hui Mālama I Nā Kūpuna 'O Hawai'i Nei be explicitly mentioned as "other expert opinion."

Dr. McManamon distributed drafts of the two findings to the Committee members and asked that they review them carefully as several opinions had been expressed during the course of the hearing.

Regarding the finding on the second set of human remains, Dr. Haas offered an additional section that noted the Committee had taken into account the original curator's lack of physical anthropological qualifications. Mr. Monroe disagreed, saying that the museum had been inconsistent in evaluating qualifications. The curator who identified the second set of human remains as Polynesian was considered unqualified, yet identification of previously repatriated remains was based solely on the donor's statement of its ethnicity.

Dr. McManamon also cautioned the Committee about recommending repatriation of the second set of remains if they were not able to find the remains to be culturally affiliated to Native Hawaiians. Such a recommendation would, in effect, circumvent the language of the law. Dr. Sullivan responded that nothing in the law precluded a museum from voluntarily repatriating culturally unaffiliated remains. Dr. McManamon agreed, but commented that the Committee had spent a lot of time working on the proposed regulations which were about to be published. It would probably not be a good idea to ignore those regulations when making the first finding.

Dr. Haas expressed his concern that the findings might inadvertently convey the message to museums that spiritual evidence by itself was adequate to determine the cultural affiliation of human remains and cultural items. The Committee had agreed that the contextual and physical anthropological evidence was inconclusive for determining the cultural affiliation of the second set of remains; thus, the spiritual evidence could be seen as the deciding factor. "I think that a big part of the responsibility of this committee," Dr. Haas continued, "is to figure out how to make this legislation work. If we present this

as our starting case, I think we are going to create tremendous discontent in [the museum] community." He was concerned that the dispute might end up in the California courts and would start the repatriation process off on an adversarial note.

Mr. Monroe agreed, stating it was imperative that the findings be explicit. "We're willing to make decisions on the basis of contextual evidence alone," he continued, "and I doubt if we would have any problem making decisions on the basis of osteological evidence alone, if it were clear. However, we're having a problem making decisions on the basis of spiritual evidence alone."

Dr. McManamon cautioned the Committee not to overstep its authority by recommending repatriation of culturally unaffiliated remains. If remains are unaffiliated, he explained, there is a possibility that they are not Native American at all. He pointed out that the draft finding for the second set of remains provided a compromise by suggesting the remains be transferred to a museum in Hawaii for future care.

Mr. Monroe suggested the Committee recommend, rather than making a finding, that the second set of remains be transferred to a Hawaiian museum. This approach would follow both the letter and the spirit of the law.

Dr. Walker suggested the Committee issue a finding which recommended that the second set of remains be transferred to the Bishop Museum, in Hawaii. The Bishop Museum, in consultation with Hui Mālama I Nā Kūpuna 'O Hawai'i Nei and the Office of Hawaiian Affairs, would be able to supply the anthropological and spiritual expertise necessary to eliminate the possibility of European ethnicity.

Dr. Haas responded that the broader issue was who should have a voice in determining what happens with remains where the contextual and osteological evidence is ambiguous, as it is with this case. He recognized the need to turn to spiritual leaders in such cases.

Mr. Monroe agreed that the issue before the Committee was one of stewardship. "We are seeking a resolution that enables us within the context of the law and in terms of precedent, to urge the museum to do the right thing. The right thing is to return [these remains] to Hawaii."

Dr. McManamon summarized his understanding of the Committee's decision: (1) the draft of the finding concerning the first set of remains should be finalized as amended; (2) the draft of the finding concerning the second set of remains should be redrafted to indicate that while some Committee members felt the evidence for Hawaiian cultural affiliation was inconclusive, all of the members agreed that these remains should be deaccessioned and transferred to a museum in Hawaii.

Presentation on the Bishop Museum's Inventory of Human Remains

Dr. Elizabeth Tatar, Chair of the Anthropology Department at the Bishop Museum, provided a general introduction to the museum's efforts to complete an inventory of the human remains in their possession.

She then introduced some of the people involved in the project: Toni Han, Project Director; Elaine Jourdane, Co-Director; and Dr. Sara Collins, Consulting Physical Anthropologist. The project consists of three parts: (1) documentary research and verification for each set of human remains and associated objects; (2) inventory preparation; and (3) preparation of a summary of all archeological and physical anthropological research conducted on the collection along with a report relating the relevance of the research to "the understanding of Hawaiian history and health of the Native Hawaiian people, past, present, and future." The majority of the remains in the collection had been recovered from four major excavations at Mokapu on the island of Oahu. The project is supported by the US Navy and the Marine Corps and assistance has been provided by Dr. Rob Hommon, US Army archeologist with the US Marine Corps.

Ms. Toni Han provided a brief geological overview of the area and a summary of its history. Mr. Tallbull asked if the staff had consulted with local religious leaders to map the spiritual environment of the project area. Ms. Han responded that consultation had not been initiated, although the museum had met with representatives of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei and the Office of Hawaiian Affairs to discuss the project. Three areas of concern had been expressed at the meetings: (1) photography of the skeletal remains; (2) access to documents and reports related to human remains; and (3) the thoroughness of the inventory research. The museum staff felt photographs were necessary to document any human remains or cultural items that would be repatriated. However, Ms. Han explained, the photographs would remain in the Museum archives as negatives and they would not be published. The Museum is still assessing the question of document access. Ms. Han felt one of the benefits the project provided was "a sense of continuity in linking the past with the concerns of the present day Hawaiians, in terms of giving them a better feel of who these people are that are buried at Mokapu."

Ms. Lisa Armstrong, Project Research Assistant, reported the types of information collected during the course of the project including: osteology catalog, accession files, annual reports of the director, researcher data, past inventories, dug materials and photographs, informants' statements, etc. She also explained briefly about the data base used in the project.

Dr. Sara Collins, Consulting Physical Anthropologist for the project, explained her role in the project as ascertaining the completeness of remains for every accession; determining ethnicity of remains where possible; determining remains' age and sex; and, determining any pathologies. Much of her work was necessary to check the accuracy of the accession/catalog records and make sure the remains examined were the same as the remains described. Dr. Collins added that the Mokapu remains have provided most of what is known about Hawaiian skeletal biology and have been studied by many people.

Mr. Tallbull commented on the museums' need to know what they had and to know how to handle the powerful objects in their collections. "There have been times when my people were actually afraid to go to the museum to see a collection of their items -- not knowing that this museum had medicine bundles stored in the basement, that's one of the no-no's at home is that you don't walk over the top of those . . . That's the danger that we find in museums, when people have no idea of what they have."

Public Comment Regarding NAGPRA Implementation in Hawaii

The Committee specifically asked members of the public to comment on issues concerning the implementation of NAGPRA in Hawaii. Drs. Sullivan and Walker expressed their concern that the notification process for the Review Committee meeting had not reached all Hawaiian groups that might

have legitimate claims under the statute. Mr. Earl Neller of the National Park Service replied that he thought most of the groups he was acquainted with, with the exception of the Hawaiian Studies Department at the University of Hawaii, had been notified. He added that in such situations it was always difficult to please all the different groups in Hawaii. Ms. Keala Kekina, a member of Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei, believed the attendance at the meeting was skewed to a particular minority since many people from the outer islands were not notified and thus did not attend.

Mr. Nathan Napoka of the State Historic Preservation Division agreed that notification was difficult because historically, Hawaiians have settled into diversified groups with decentralized governments. He identified Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei as the only Native Hawaiian group which has come forward on the national level to take responsibility for repatriating Native Hawaiian remains.

Dr. Walker asked Mr. Napoka whether, in his opinion, other groups would begin to speak up as significant sacred objects and objects of cultural patrimony were returned to the islands in the care of Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei. Mr. Napoka recommended that the Committee ask someone with Hawaiian ethnographic expertise to advise them about repatriation of Hawaiian sacred objects and objects of cultural patrimony and also to inform them of traditional Hawaiian beliefs and dissenting Hawaiian viewpoints.

Dr. Sullivan asked members of the public to contribute their ideas concerning which Hawaiian organizations should be contacted with regard to Native Hawaiian human remains and cultural items. Mr. Napoka recommended that notifications be sent to the 55-member Burial Council established under the state burial law. He explained that the council is made up of commissioners who represent each geographic area of the islands. The commissioners are community based and, as such, are able to effectively solicit and disseminate information. He volunteered to provide the Committee with a mailing list of Burial Council members.

Mr. Ayau suggested placing notices in newspapers with statewide circulation as well as in the Office of Hawaiian Affairs’ newspaper: *Ka Wai Ola O OHA*.

Ms. Kekina requested the notification of as many groups as possible, particularly the colleges and universities since it is easier for people on each island to contact their local colleges than to wait for information from other organizations. She also asked that Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei and the Office of Hawaiian Affairs set up toll-free numbers so that people from the outer islands would not have to pay long-distance charges to get information.

Ms. Lynn Lee, Office of Hawaiian Affairs, agreed that notification of the Hawaiian Studies Departments at each State University and community college would be a good way to contact the many Native Hawaiians on the outer islands.

Mr. Kūnani Nihipali offered the services of *Hui Na‘auao*, a community education program dealing with issues related to sovereignty and self-determination, as a means for notifying Native Hawaiian groups.

Mr. Earl Neller, National Park Service, defended archeologists against complaints that they "don't say prayers or have spiritual feelings." He remarked that the Bishop Museum should be considered as both a Hawaiian organization and as a community organization. Mr. Neller felt the scientific research

conducted by the museum and other archeologists in the state should be considered as part of the Hawaiian effort to keep the world in balance.

Mr. Alohawaina Makanani, a member of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, spoke regarding sacred objects. Mr. Makanani wanted people to be able to get sacred objects repatriated or, at least, to get descriptive information relating to these objects so that they could be reproduced for family or personal use. He thought any individual or organization who had applied to a museum for permission to view or study a sacred Hawaiian object should be notified of its possible repatriation. In response to a question from Dr. McManamon, Mr. Ayau stated that Hui Mālama I Nā Kūpuna 'O Hawai'i Nei was primarily concerned with the return of their ancestors' bones.

Mr. Nihipali asked about the possibility of Federal funds to help finance education and the communication process between Hawaiian groups. Dr. Haas explained that he would be appearing before the Senate Appropriations Committee to speak in support of funding for grants to museums and Native American peoples to assist them in complying with the statute. He felt that much of the money allocated to museums should go towards ethnographic identification procedures while the money allocated to Native Americans, including Native Hawaiian organizations, would be targeted to fund visits to museums to identify sacred objects and objects of cultural patrimony.

Mr. Tallbull identified lack of money as the primary problem facing all Indian tribes and Native Hawaiian organizations. "We don't have the means to go to the museums [to] reconnect ourselves with some of the artifacts that have been taken." As an example, he described how the Northern Cheyenne have been trying to locate a mass grave dug by the Army that contained the remains of approximately 64 Cheyenne. The Army had not been helpful, so the tribe hired a researcher to review Army records. The tribe has since received information that the bodies were loaded on a train and sent by the Army to one medical school in Pennsylvania and another in Canada. "We're in a bad situation where, because of lack of money, we can't even go after those skulls [6 skulls which were located at the Peabody Museum and identified as originating with the mass grave in question] and bring them home."

Mr. Ayau requested clarification from the Committee regarding the issue of scientific studies of human remains during the inventory process. Chairperson Naranjo responded that the Santa Clara Pueblo beliefs about bodies are different from what other people, including Hawaiian people, feel. "We're most interested in the spirit," she said, "and not interested in what contains a spirit." Other tribes feel differently. "We've got a multi-cultural situation here," she continued, "with over 800 tribes. Every tribe will have a different opinion on scientific studies."

Mr. Ayau insisted that any scientific study should be a last remedy, after assessing existing documentation and contextual information, and that it should only be done after consultation with the Native American people involved. Dr. Haas agreed that scientific analysis should be done after consultation but, he said from his experience, such analysis was often very helpful to both museums and tribes. He cited one example in which scientific analysis of the remains helped identify one individual from a larger group who was not culturally affiliated with the particular tribe that had asked for the repatriation of the remains. The tribe concluded repatriation of that one individual would be dangerous because they were not of the proper culture. The tribe did not want those remains back. Dr. Haas added that while the statute did not actually prohibit scientific examinations of human remains, he would certainly encourage the museum community to consult before conducting scientific analysis of Native American human remains.

Mr. Ayau described a similar case of consultation between Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei and the Peabody and Essex Museum. The museum had two human skulls, one of which was identified as Hawaiian and the other for which there was non-conclusive information. Both skulls were returned to Hawaii and stored at the Bishop Museum while Dr. Collins examined the second skull. She was also unable to conclusively confirm the ethnicity of the second skull so it was returned to the Peabody and Essex Museum. The Hawaiian skull was repatriated to Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei.

Dr. Collins commented on the benefits of scientific analysis of skeletal remains from the perspective of her work as physical anthropologist with the US Army Central Identification Lab. In the forensic cases she examined for the Army she relied upon three types of evidence: (1) biological evidence; (2) circumstantial evidence; and (3) material evidence. Biological evidence is the most conclusive type of evidence, but it was not always possible to examine the skeletal parts which provide the most clues. However, when poor biological evidence is combined with circumstantial and material evidence, it is often possible to reach a conclusion. She got a feeling of emotional satisfaction when an identification could be made and a family notified that a loved one was no longer "missing." She understood that repatriation of Native American human remains was an equally emotional undertaking. However, she also felt the need to do her job as well as she could and, while members of Hui Mālama I Nā Kūpuna ‘O Hawai‘i Nei might find it "distasteful," biological evidence often proves to be the critical factor coming to a right decision.

Mr. Ayau spoke of the need for an amendment to Hawaii's Historic Preservation Act to integrate it with NAGPRA. Hawaii's Historic Preservation Act deals with the treatment of human remains that are currently in Hawaii, but does not deal with remains repatriated from outside the state. On the other hand, NAGPRA deals with repatriation of human remains but does not deal with their reinterment. The amendment to state law proposed by the Historic Preservation Division would require consultation with the appropriate island burial council before any repatriated remains are buried. This would help the Historic Preservation Division, which is responsible for keeping the State inventory on burial sites, keep track of the reburial sites so that a reinterment will not be disturbed.

Mr. Tallbull talked about the discovery, in the Sweet Grass Hills area of northern Montana, of two abalone shell masks. After the discovery there had been a meeting of the Montana tribes to try and discover a connection between the masks and one or more modern tribes. All of the tribes have different burial and offering procedures, and one method of discerning a connection would have been to excavate the area where the masks were found and search for indications of how they had been laid out, but none of the tribes wanted to disturb the area further. His point being that even among themselves, Indian tribes have found it hard to come to a definitive conclusion as to how to attribute cultural affiliation.

Mr. Alike Silva and Mr. Glen Kila, members of *Koa Mana*, a group which takes care of the bones of the ancestors, or *iwi*, recommended an examination of the area surrounding the burial, as well as of the materials found with human remains, as means of determining ethnicity without analyzing the bones themselves. Mr. Kila explained that Hawaiian families from different areas have different customs with regard to burial. It is thus possible for a Hawaiian to tell the familial affiliation of remains by examining how it was buried. Mr. Kila reiterated that it made him uncomfortable, as a Hawaiian, to think of the scientific study of bones. The *iwi* are not just physical things, they are spiritual. He suggested that the regulations should make it explicit that Hawaiian customs take precedence over American customs and that scientific examination of Hawaiian bones should not be allowed.

Ms. Hinano Campton spoke of the need to listen to the ancestors and care for them.

Ms. Kauwamakani Ellis expressed her appreciation of Ms. Craig, Mr. Tallbull, and Chairperson Naranjo for sharing their feelings regarding spirits and ancestors. She also explained the process by which she and the other Hui Mālama I Nā Kūpuna 'O Hawai'i Nei representatives communicated with the *kupunas* at the Hearst Museum.

Mr. Bulla Logan of *Pilikana O Na Koolauloa* expressed his concerns that bones continue to be disturbed in spite of NAGPRA. He asked if there was some way to shut down beach development in Hawaii, as that is where all ancient Hawaiians were buried. Mr. Monroe explained that the Committee did not have the power to enforce the law; their role is purely advisory. He also explained that the law requires consultation with Native American groups upon the discovery of human remains. Mr. Logan stated he believed developers would hide any remains found during excavation, not notify Native Hawaiians, and continue to develop. Dr. Haas clarified that NAGPRA refers to human remains discovered on federal land or land held in trust by the US Government. It does not cover development which takes place on private land.

Mr. Ayau explained the process by which a private landowner in Hawaii would prepare to develop land. The permitting process is done on the county level and the State Historic Preservation Division reviews the requests. If the area in question is known for other burials or historic property, the Division can request a survey to determine what is on the property. In communities where burial records have been kept it is relatively easy to determine if graves are on the property. Archeologists may have to survey the property if the records have been lost. When remains are discovered, a determination of ethnicity must be made. If contextual evidence is sufficient to determine that the remains are Hawaiian, the proper treatment of the remains is decided by the burial council from that particular island. The burial council decides if the burial should remain in place or be relocated. Any burials discovered after the survey fall under the control of the Department of Land and Natural Resources. Mr. Ayau admitted that the state law only works where the Division knows what is going on. Unreported discoveries can be concealed.

Mr. Tallbull suggested that tribal ordinances be developed concerning archeological and environmental protection so that the Native Hawaiians would not have to rely on state and Federal laws to uphold their concerns.

Mr. Alohawaina Makanani of *Protect Kahoolawe Ohana* said his organization had been working to address the problem of the protection of burials since the 1970s. They encouraged Native Hawaiians to train as amateur archeologists so that they would be able to work with museums and archeologists and provide a Native Hawaiian perspective on sacred objects and human remains. The burial councils have also identified "burial monitors," Native Hawaiians who have been trained in basic archeological skills and the handling of human remains so that they can work with survey archeologists as they uncovered remains and sacred objects. Mr. Makanani had found, when he worked on projects, that any discoveries which did not include bones were deemed insignificant and development continued. One of his main concerns centered on who should be entrusted to make the determination of what is sacred. Chairperson Naranjo responded that the Committee had devoted much of its time in previous meetings to exactly that question. "It is very important for us on the Committee," she said, "that those community people determine what is sacred."

Report to Congress

Dr. McManamon explained that the statute required the Committee to submit an annual report to the Congress on the progress made and any barriers encountered in implementing the statute during the previous year. A report covering the Committee's first year in existence had been drafted. The draft detailed the nomination procedures and responsibilities of the Committee and provided biographies of all the members, a discussion of staffing considerations, a brief review of the three meetings held to date, and the Chairperson's election. It also included a brief description of the various items that the Committee had worked on over the previous year, including the memorandum on summaries and inventories, the proposed regulations, the monitoring of summaries and inventories, and the current dispute. The Report also included a section entitled "Recommendations."

Dr. Sullivan wanted to make it clear to Congress that repatriation was occurring and that museums and Native American groups were consulting with one another. Mr. Monroe suggested not dealing with any issues related to statutory language at the present time. He also recommended that the report emphasize the need for funds to enable museums and Native American groups to implement the law. The Committee agreed to include Dr. Sullivan and Mr. Monroe's comments and approved the draft report.

Future Activities

The Committee discussed the status of the grants program authorized by the statute. Dr. Haas said he would be testifying before Congress on behalf of a consortium of organizations including the American Association of Museums and the Native American Rights Fund. Mr. Monroe recommended that the Department of the Interior be strongly urged to request at least \$10 million for the FY1994 budget for the grants program. Dr. Haas suggested that this request be tied to a reference to repatriation efforts to date and a clear statement of what will be done with the funding after it is received. The Committee agreed that each member should draft a letter outlining their recommendations to Congress with regard to funding.

Dr. McManamon proposed that the Committee next meet after the comment period for the proposed regulations ended and that the meeting be devoted to preparing recommendations, based on the comments received, for the final regulations. He also suggested the Committee meet next in Washington, D.C. to give the people in the Clinton administration a chance to meet the Committee members. The Committee agreed to tentatively plan for a meeting in May in Washington, D.C.

Dr. Haas suggested that meetings devoted to resolving any upcoming disputes be scheduled for a location near one or both of the disputants. This practice would send a message that the Committee takes the dispute process very seriously.

Chairperson Naranjo brought up the idea of developing training sessions for Native American communities so that they would be more informed on NAGPRA. Dr. Sullivan reported that the American Association of Museums was developing a variety of programs to try and train museum people in the area of collections management with respect to NAGPRA. He added that he would be meeting with museum and Native peoples from North America to draft a document on the ethics of museum practices with regard to Native objects and consultation with Native peoples.

Closing

Dr. McManamon, on behalf of the Park Service and the Department of the Interior, thanked the Review Committee members for their time and effort, especially when dealing with the hard issues such as those at this meeting, and he thanked the members of the public who participated throughout the meeting.

Mr. Tallbull expressed his appreciation to the people present for allowing him to come to this "powerful place" to meet with the people, and listen to their words. "One thing that we cannot forget," he said, "no matter where we go or how far we stray away. The elders are no longer going to be there. But each one of our children," he continued, "one by one, can go out and maintain [their] relationship. All the spirits are still there. They haven't gone anywhere. All you have done is been disconnected from them. Go back and reconnect yourself with it. You do that."

The meeting was closed at 10:03 a.m. on Sunday, February 28, 1993.

Approved:

/s/Tessie Naranjo
Tessie Naranjo, Chair
Native American Graves Protection
and Repatriation Committee

September, 22 1993
Date